

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH LEE NORMAND,

Defendant.

Case No. C06-5026 RBL

NO. CR98-5389 JET

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant's Motion Pursuant to 28 U.S.C. § 2255.

Having considered the entirety of the records and file herein, the Court finds and rules as follows:

On May 2, 2003 the defendant was re-sentenced after remand to 235 months custody for violations of federal drug laws. [CR98-5389 JET, Dkt. #241]. He did not file an appeal of that sentence; therefore, the judgment became final shortly thereafter. He now seeks to be re-sentenced under the recent decision of the Supreme Court in *United States v. Booker*, 125 S. Ct. 738 (2005) which declared that the United States Sentencing Guidelines were advisory only. However, the Ninth Circuit has ruled that the decision in *Booker* does not apply retroactively to defendants, such as Mr. Normand, whose convictions became final prior to the date of its publication. *United States v. Cruz*, 423 F.3d 1119, 1120 (9th Cir. 2005), *cert. denied*, _____ U.S. ____, 2006 WL 152073 (January 23, 2006). It is therefore

ORDERED that Defendant's Motion Pursuant to 28 U.S.C. § 2255 is **DENIED**.

The Court declines to issue a certificate of appealability because the defendant has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing pro se.

Dated this 28th day of January, 2006.


RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE